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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

(Placer)

In re the Marriage of JULIE BRADDOCK
and JAMES LONG.

C086177

JULIE BRADDOCK,

(Super. Ct. No. S-DR-0031656)

Respondent.

v.

JAMES LONG,

Appellant.

James Long appeals from postjudgment orders that resolve numerous issues including child custody, child support, attorney fees, and sanctions. Long raises several claims on appeal. Each of his claims fail, either because they lack merit, they are outside the scope of appellate review, or he has failed to provide an adequate record on appeal. We affirm the trial court's orders.

FACTUAL AND PROCEDURAL BACKGROUND

The record on appeal does not include a reporter's transcript of the hearing in this matter. This is referred to as a "judgment roll" appeal. (See *Krueger v. Bank of America*

(1983) 145 Cal.App.3d 204, 207 [appeal based solely on clerk's transcript is considered "to be upon the judgment roll alone"] (*Krueger*).)

The limited record we have establishes that Julie Braddock and James Long's marriage was dissolved by a default judgment in November 2008. That judgment included an order that the parties would share joint legal custody of their minor children: M.L. (born Nov. 1999) and J.L. (born Apr. 2001). The court awarded Braddock primary physical custody of the parties' children, granting Long reasonable visitation "as agreed upon by the parties." Litigation regarding custody of the children began in March 2013 when Long filed a motion to modify custody.

Over the next several years, the parties filed numerous motions related to custody and numerous orders were issued. During that same time period, "the parties [were] provided at least six opportunities to engage with court appointed child custody professionals." By August 2015, there were "61 total child protective services referrals for this family," though none resulted in the "formal filing of a Welfare and Institutions Code [d]ependency case in either Sacramento or Placer County." And, by January 2017, "[M.L.] had been placed on a minimum of [14] separate Welfare and Institution Code section 5150 holds"

On October 2, 2017, the parties appeared before the trial court "to determine child custody, child support, attorney fees and costs and sanctions" Long was represented by counsel; Braddock represented herself. In addition to the pleadings on file, the parties submitted evidence, both written and oral, and argument on the issues. The court took the matter under submission and issued a written decision on October 20, 2017.

In its written decision, the trial court noted that M.L. was seriously injured in a car accident and was in the hospital at the time of the hearing. The court also noted that M.L. would be 18 years old in November 2017, shortly after the court's orders were issued. The custody orders as to M.L., the court found, would terminate on her birthday.

After considering the pleadings on file, the oral and documentary evidence, and the parties' arguments, the court found there was credible evidence that Braddock struggled with mental health challenges. The court also found, based on "credible evidence," that Long had a "long history of alcohol use, abuse and dependence." The court acknowledged Long's efforts at sobriety, but "[a]pplying the law to the facts established at trial," found by a "preponderance of the evidence," that Long "continues to be a habitual or continual abuser of alcohol" Thus, the court ruled: "[T]he court finds by a preponderance of the evidence that [Long's] continual use and abuse of alcohol is contrary to the best interest[s] of the children and he is ordered to engage in alcohol testing to ensure compliance with the court order to abstain from the use of alcohol." (Fn. omitted.)

The court also found the evidence at trial established that with the support of his wife L.L., Long was able to provide J.L. with more consistency in meeting J.L.'s "educational and treatment goals." The court found that Long's wife was a reliable source of support for J.L., including driving J.L. to and from school and other appointments.

The court ordered Long and Braddock to share legal custody of both J.L. and M.L. The court also ordered the parties to share physical custody of J.L., but gave Braddock sole physical custody of M.L., granting Long visitation rights. The court issued explicit orders related to the definition of joint legal custody and explained to the parties how they should communicate regarding their children.

At the time of the court's ruling, M.L. was still hospitalized. Accordingly, the court ordered that Long could visit with M.L. in the hospital "subject to the protocols and recommendations of hospital staff." The court also ordered Braddock not to prevent Long from visiting M.L. while she was hospitalized, but Long must text Braddock no later than 30 minutes before he intended to visit. The court ordered a more defined

parenting plan with regard to J.L., limiting Braddock's parenting time to three weekends each month and describing a relatively equal division of holiday and vacation time.

The court denied Long's request for attorney fees and costs without further explanation, denied Long's request for documents as moot, and ordered Braddock to pay Long \$1,000 in attorney fees as sanctions under Family Code section 271.¹ In reaching its decision to grant Long's request for sanctions, the court found Braddock's conduct "amplified and increased the number of court appearances" and "frustrated the policy of the law." The court also found that imposing fees under section 271 "would not impose an unreasonable financial burden on [Braddock] with a payment plan ordered."

The court also ordered Braddock to pay to Long \$400 in photocopying costs, however, that amount was offset by the \$165 Braddock had to pay when Long failed to show for alcohol testing. The court ordered Braddock to pay the balance of \$235 to Long on or before December 1, 2017.

The court denied Long's request that Braddock return "certain itemized property." The court explained: "The parties['] Judgment of Dissolution was entered on March 11, 2009. [Long] now requests the return of certain itemized property. [Braddock] asserts she does not possess the requested property. The court declines to issue an order."

Long appeals from these orders.

DISCUSSION

1.0 Standard of Review

On appeal, we must presume the trial court's judgment is correct. (*People v. Giordano* (2007) 42 Cal.4th 644, 666.) Thus, we must adopt all inferences in favor of the

¹ Undesignated statutory references are to the Family Code.

judgment, unless the record expressly contradicts them. (See *Brewer v. Simpson* (1960) 53 Cal.2d 567, 583.)

The party challenging a judgment bears the burden to provide an adequate record to assess claims of error. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) When an appeal is “[on] the judgment roll” (*Krueger, supra*, 145 Cal.App.3d at p. 207), we must conclusively presume evidence was presented that is sufficient to support the court’s findings (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154 (*Ehrler*)). Our review is limited to determining whether any error “appears on the face of the record.” (*National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 521 (*National Secretarial*); Cal. Rules of Court, rule 8.163.²)

2.0 Claims of Error

2.1 Alcohol Testing

Long contends the trial court acted without legal authority and violated his due process rights by ordering him to perform alcohol testing and to reimburse Braddock for the same. We disagree.

First, Long challenges numerous orders for testing, but the only order properly before this court is the October 20, 2017 order for testing. (Rules 8.100(a)(2) [notice of appeal must identify order appealed from] and 8.104(a)(1)(C) [notice of appeal must be filed no later than 180 days after the judgment or order is entered or filed].)

Second, section 3041.5, subdivision (a) unequivocally establishes that “[i]n any custody or visitation proceeding brought under this part . . . , the court may order any parent who is seeking custody of, or visitation with, a child who is the subject of the proceeding to undergo testing for the illegal use of controlled substances and the use of alcohol if there is a judicial determination based upon a preponderance of evidence that

² Further rule references are to the California Rules of Court.

there is the habitual, frequent, or continual illegal use of controlled substances or the habitual or continual abuse of alcohol by the parent or legal custodian”

Here, the trial court found by a preponderance of the evidence that Long “continues to be a habitual or continual abuser of alcohol.” The court thus ordered him to submit to alcohol testing. Such an order was well within the court’s authority. (See § 3041.5; see also *Deborah M. v. Superior Court* (2005) 128 Cal.App.4th 1181, 1189-1190 [finding § 3041.5 drafted in response to decision in *Wainwright v. Superior Court* (2000) 84 Cal.App.4th 262, and giving trial courts express authority to order testing for drugs and/or alcohol].)

In addition, we must presume on this limited record that the trial court properly exercised its discretion to order alcohol testing by correctly applying the law and giving due consideration to the evidence before it, and that the evidence was sufficient to justify the order issued. (*Ehrler, supra*, 126 Cal.App.3d at p. 154.) This also is true for the court’s order that Long must reimburse Braddock for the tests for which Long failed to appear. (*Ibid.*)

2.2 *M.L.’s Custody*

Long asks this court to find the trial court violated his “legal and physical custodial rights” as they relate to M.L. He further contends there was substantial evidence to support a change in her custody. As noted in the trial court’s order, M.L. turned 18 in November 2017; all custody orders relative to M.L. terminated on her birthday. Accordingly, those custody orders are void and no longer enforceable, and Long’s claims regarding those orders are moot.

2.3 *Abuse of Discretion—Custody Orders*

Long also claims the trial court abused its discretion in refusing to grant him sole legal and physical custody of M.L. and J.L.

First, any challenges to prior orders are not properly before this court. Those orders that were temporary are not appealable. (*Lester v. Lennane* (2000) 84 Cal.App.4th 536, 557-561.) Long did not appeal from those orders that were appealable; he cannot challenge them now on this appeal. (Rules 8.100(a)(2) [notice of appeal must identify order appealed from] and 8.104(a)(1)(C) [notice of appeal must be filed no later than 180 days after the judgment or order is entered or filed].)

Second, as discussed above, the issue is moot as to M.L., who is now 18 years old.

Third, relative to the custody orders for J.L., on this judgment roll appeal, we presume the evidence supports the trial court's ruling unless error "appears on the face of the record." (*National Secretarial, supra*, 210 Cal.App.3d at p. 521.) Having reviewed the appellate record, we conclude Long has not met his burden of establishing error.

2.4 *Request for Relief Outside the Scope of Appellate Review*

In this appeal, Long asks this court not only to "reverse the judgment" of the trial court but to issue numerous orders to the trial court. Among other things, he asks this court to "declare" that he has sole legal and physical custody of J.L. and that Braddock's visitation with J.L. must be supervised. He also asks us to strike evidence relative to his alcohol use, order Braddock to return his "belongings and reimburse [his] replacement costs," assign this to a different judge on remand, seal his test results, re-analyze his request for sanctions, order Braddock to reimburse him for alcohol tests he completed in 2015, and order compliancy hearings until J.L. turns 18.

Long fundamentally misunderstands the role of this court. The relief he is requesting is outside the scope of appellate review.

2.5 *Abuse of Discretion—Attorney Fees*

Long also contends the trial court abused its discretion, both in awarding only \$1,000 in fees as sanctions and in "repeatedly deferring" his requests for sanctions against Braddock, throughout the proceedings.

First, Long cites no authority to support his contention that deferring the issue of attorney fees as sanctions is ever an abuse of discretion. (See, e.g., *In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1495 [finding trial courts *may* impose sanctions under § 271 during the pendency of proceedings].)

Second, in reviewing an order for sanctions under section 271, “ ‘[t]he trial court’s order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order’ ” (*In re Marriage of Daniels* (1993) 19 Cal.App.4th 1102, 1106.) We presume on this limited record that the trial court properly exercised its discretion by correctly applying the law and giving due consideration to the evidence before it, and that the evidence was sufficient to justify the order issued. (*Ehrler, supra*, 126 Cal.App.3d at p. 154.)

DISPOSITION

The trial court’s orders are affirmed. Braddock is awarded her costs on appeal, if any. (Rule 8.278(a)(1), (2).)

BUTZ, Acting P. J.

We concur:

MURRAY, J.

HOCH, J.